

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CARLOS SOTO,

Plaintiff,

Hon. Richard Alan Enslen

v.

Case No. 4:04 CV 151

UNKNOWN AYDAR, *et al.*,

Defendants.

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**ORDER**

This matter is before the Court on Defendant Dr. Abdellatif's Motion to Dismiss Under Fed. Rule Civ. Pro. 12(b)(4) and (5) for Insufficient Process and Insufficiency of Service of Process and Defendants Dr. Aydar and P.A. Heebsh's Motion to Dismiss for Insufficient Process and Insufficiency of Service of Process and to Join Dr. Abdellatif's Motion to Dismiss Under Fed. Rule Civ. Pro. 12(b)(4) and (5). For the reasons discussed below, Defendants' motions are **denied**.

Plaintiff initiated this action on November 15, 2004, against several individuals, including Defendants Abdellatif, Aydar and Heebsh. On December 7, 2004, the Court directed that Plaintiff's Complaint be served on Defendants. The initial attempts to serve Defendants Abdellatif, Aydar, and Heebsh were allegedly insufficient, prompting the present motions to dismiss.

Subsequent to the filing of these motions, Defendant Aydar was properly served, thus rendering moot his motion to dismiss for insufficient service of process. While attempts to properly serve Defendants Abdellatif and Heebsh have been unsuccessful, their subsequent conduct also renders moot their motions to dismiss for insufficient service of process.

On August 9, 2005, Defendants Abdellatif and Heebsh filed a motion seeking the dismissal of Plaintiff's Complaint on the grounds that he has failed to state a claim upon which relief may be granted and has further failed to properly exhaust all available administrative remedies with respect to the claims asserted in his Complaint. By affirmatively invoking the Court's jurisdiction on their behalf, Defendants Abdellatif and Heebsh have waived any claim that service was defective or insufficient. Fed. R. Civ. P. 12(h)(1).

**THEREFORE, IT IS HEREBY ORDERED** that Defendants Abdellatif, Aydar and Heebsh's Motions to Dismiss For Insufficient Service of Process (Dkt. Nos. 18 & 29) are **DENIED**.

DATED in Kalamazoo, MI:  
September 22, 2005

/s/ Richard Alan Enslen  
RICHARD ALAN ENSLEN  
SENIOR UNITED STATES DISTRICT JUDGE